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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

WALTER MARTINEZ,

Plaintiff and Appellant,

v.

TAMARA GRANT et al,

Defendants and Respondents.

A153401

(San Francisco County
Super. Ct. No. CGC-16-552158)

After plaintiff and appellant Walter Martinez prevailed against defendants and respondents Tamara and Aundrea Grant¹ in his personal injury lawsuit, he filed a motion seeking to recover cost of proof under Code of Civil Procedure section 2033.420, based on Aundrea's failure to admit certain requests for admissions. Appellant appeals from the denial of his motion, arguing the trial court erred in concluding that Aundrea had reasonable grounds for not admitting the requests and he had not met his burden of demonstrating the actual reasonable expenses incurred to prove those two requests. Because appellant has not provided an adequate record for our review, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

This case arises out of a collision between a motorcycle and an automobile in San Francisco. Appellant was riding his motorcycle between cars in traffic, known as lane splitting, when Aundrea, a passenger in Tamara's car, opened her car door and struck him. Respondent's insurance company sent a letter to appellant's attorney stating: "In

¹ We use the first names of respondents for the sake of clarity. No disrespect is intended.

regards to the liability, we do not feel a jury would find our insured to be 100% at fault for her actions. [Appellant] was lane splitting on a city street in a bltant [sic] effort to get ahead of the traffic that was lawfully stopped in their lanes.” During discovery, appellant served requests for admissions on Aundrea, asking her to admit that he was not a substantial factor in causing his own damages from the accident (Admission No. 5) and to admit that the reasonable cost of appellant’s “reasonably necessary medical care” relating to the accident was \$19,240 (Admission No. 6). Aundrea denied both requests.

The trial centered around whether plaintiff was contributorily negligent by riding his motorcycle between cars in traffic and over proof of medical expenses. Respondents argued that appellant was at fault for riding on the lane line while lane splitting and they disputed the reasonableness of certain medical expenses incurred by appellant. The jury returned a verdict finding that Aundrea was 100 percent at fault for the accident. The jury also found that appellant was negligent, but that his negligence was not a substantial factor in causing his own harm. It awarded appellant \$19,240 in medical expense, \$2,173 in lost earnings, \$700 for personal property loss, and \$10,000 in pain and suffering.

After the trial, appellant filed a motion for costs of proof under Code of Civil Procedure section 2033.420,² requesting \$26,318 in attorney fees and costs.³ The trial court filed its order denying appellant’s motion for costs of proof. The order states, in relevant part: “The court finds defendant had reasonable grounds for not admitting Plaintiff’s Request for Admissions 5 and 6, and plaintiff has not met his burden of demonstrating the actual reasonable expenses incurred to prove those two Requests for

² Code of Civil Procedure section 2033.420, subdivision (a) provides: “If a party fails to admit the genuineness of any document or the truth of any matter when requested to do so under this chapter, and if the party requesting that admission thereafter proves the genuineness of that document or the truth of that matter, the party requesting the admission may move the court for an order requiring the party to whom the request was directed to pay the reasonable expenses incurred in making that proof, including reasonable attorney’s fees.” Further undesignated statutory references are to the Code of Civil Procedure except as otherwise indicated.

³ We grant appellant’s motion to augment the record to include his proposed order lodged on October 3, 2017.

Admissions, therefore plaintiff's motion for Costs of Proof is denied." This appeal followed.

DISCUSSION

A trial court's order is presumed correct. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133; *Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1275–1276, fn. 20.) As reviewing courts do not presume error, the appellant has the responsibility to provide an adequate record to demonstrate if the trial court abused its discretion. (*Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 447.) Here, appellant has failed to include a reporter's transcript or suitable substitute of the hearing on his motion below. Respondents argue that appellant has not provided an adequate record and has therefore forfeited his arguments on appeal. We agree.

The determination whether a party is entitled to cost of proof sanctions under section 2033.420 is within the sound discretion of the trial court. (*Laabs, supra*, 163 Cal.App.4th at pp. 1275–1276.) An order denying a motion for sanctions under section 2033.420 will be reversed only where the party challenging the order shows that the trial court abused its discretion. (*Wimberly v. Derby Cycle Corp.* (1997) 56 Cal.App.4th 618, 637, fn. 10.)

The primary purpose of requests for admission is to narrow the issues in dispute and expedite trial. "[A]n award of costs of proof for a denial of a request for admission involves the weighing of a number of factors, such as whether the matter denied was of 'substantial importance'; whether there was a 'reasonable basis' for the denial; whether the party making the denial knew or should have known at the time that the requested matter was of 'substantial importance' and was true; whether there were 'other good reasons for the denial'; and whether and to what extent the responding party made a good faith effort otherwise to resolve the matter." (*City of Glendale v. Marcus Cable Associates, LLC* (2015) 235 Cal.App.4th 344, 354.) The record supplied by appellant discloses only the trial court's determination that respondent had a reasonable basis for

denying the requests for admission and that appellant had not carried his burden of demonstrating the actual reasonable expenses incurred in proving these matters.⁴

Appellant contends the record is sufficient because it contains the parties' moving papers and the trial court's order, but these do not provide the basis upon which the trial court ruled. The trial court might have concluded that because appellant was found negligent by the jury, respondent could have reasonably believed that appellant's own negligence was a substantial factor in the cause of his own injuries. Or that it was reasonable for respondent to challenge the medical necessity of certain chiropractic treatment appellant received several months after the accident. We need not speculate, however, as to the grounds on which the trial court relied because in the absence of an adequate record, we can discern no error. (*Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 136.) Appellant has forfeited his argument on appeal. (*Wagner v. Wagner* (2008) 162 Cal.App.4th 249, 259.)

DISPOSITION

The order is affirmed.

⁴ While it appears appellant requested a statement of decision after the trial court issued its order, the record does not indicate that the trial court ruled on the request. At oral argument, appellant's counsel conceded the trial court had not issued a statement of decision and counsel had not followed up with the court.

Sanchez, J.

WE CONCUR:

Humes, P. J.

Margulies, J.